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From: CN=Tom Hagler/OU=R9/O=USEPA/C=US
Sent: Wed 6/15/2011 9:03:02 PM
Subject: Fw: BDCP Alternatives, NEPA and Corps Permitting

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From: Karen Schwinn/R9/USEPA/US
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Date: 05/16/2011 04:15 PM
Subject: Fw: BDCP Alternatives, NEPA and Corps Permitting

----- Original Message -----
From: Karen Schwinn
Sent: 05/16/2011 07:15 PM EDT
To: Tom Hagler
Subject: Fw: BDCP Alternatives, NEPA and Corps Permitting

David and Patti:

Thanks for giving us an update on Friday May 6, 2011 regarding the status of the BDCP EIS/EIR for permitting under Section 10 of ESA. DOI provided a verbal summary of alternatives being considered by the BDCP Executive Committee for evaluation in the EIS/EIR. DOI also indicated May 19, 2011 as the date by which the Executive Committee plans to finalize the range of alternatives to be analyzed and requested the Corps identify any questions/concerns about the alternatives before then.

As you know, as part of our pre-application discussions, the lead federal agencies, EPA and the Corps have been considering whether a NEPA/Corps permitting MOU would be appropriate and useful in advancing permit decisions for the BDCP. The Corps has used similar MOUs with other agencies, including CA High Speed Rail and Caltrans, with success. On May 5, we met and agreed

that development of such a "NEPA/404 Integration" MOU is important and would continue. As a follow-up to the meeting, the Corps developed an initial draft MOU and on May 12 routed it to agency representatives for review and comment. The MOU is focused on the major decision points for the Corps aligned with NEPA. These points include concurrence on:

1. Project purpose
2. Range of alternatives to be evaluated in the NEPA document
3. Preliminary LEDPA
4. Compensatory mitigation plan.

These steps are identified as checkpoints to either reach agency agreement or elevate specific issues to higher management levels. The agency representatives will be meeting May 25 to discuss comments and advance the MOU.

We would like to continue pursuing an MOU so that we can collectively establish a reasonable process for ensuring the BDCP EIS/EIR includes sufficient information on which to make permit decisions. DOI's recent request for input from the Corps (and EPA) regarding the range of alternatives to be considered in the EIS/EIR is not consistent with pursuing such an MOU. We are concerned that the lead federal agencies, EPA and the Corps have not agreed on the project purpose statement, and now are being requested to provide input on the range of alternatives based on minimal information by May 19. Establishing an MOU outlines information requirements and timelines to be followed by all signatories for each checkpoint.

We acknowledge that there is no requirement that lead federal agencies or permit applicants to engage in pre-application consultation or integrate the Corps permitting process with BDCP NEPA. However, without an MOU, the default process includes the Corps evaluating project information only after receipt of a complete permit application, potentially requiring additional alternatives to be analyzed and supplemental NEPA documentation. Instead, the Corps supports integrating NEPA, ESA, Rivers and Harbors Act of 1899 and Clean Water Act processes and compliance to avoid delays which could result from sequential project review, additional NEPA analyses and difficult permit decisions.

We cannot provide you comments on the possible alternatives under consideration because we have not been provided sufficient information on any of the alternatives to express an opinion on their adequacy for compliance with NEPA, Clean Water Act, or the Rivers and Harbors Act. It would be helpful at our May 25 meeting to assess where the lead agencies and regulatory agencies believe the BDCP EIS/EIR process stands at this time and to reconfirm a collective decision on pursuing an MOU.

Michael S Jewell
Chief, Regulatory Division
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